IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.10000 of 2005

Date of Decision:9.11.2006

Om Parkash

....Petitioner.

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others.

...Respondents.

CORAM : Hon'ble Mr.Justice M.M.Kumar.
Hon'ble Mr. Justice M.M.S.Bedi.

Present:- Mr.Jagbir Malik, Advocate
for the petitioner.

Mr. Ajay Bhardwaj, Advocate
for the respondents.

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M.M.KUMAR, J.(ORAL)

The prayer made by the petitioner in the instant petition is for issuance of direction to the respondents to release Rs.79,000/- of gratuity, Rs.22,754/- on account of leave encashment with interest at the rate of 18% per annum from the date of his retirement till the date of its payment. Further prayer has been made for payment of interest at the rate of 18 % per annum for delaying payment of other retiral benefits.

The petitioner has superannuated on 30.9.1999 from the post of Junior Engineer. Before his retirement on 7.12.1998 a show cause notice was issued to him that he did not return 59 damaged transformers to the store. Subsequently, a reminder was also sent on 28.1.1999. The petitioner sent a reply on 5.4.1999 by attaching a photocopy of the register which has

been duly audited by the audit party and submitted that he has already returned the damaged transformers.

It is admitted case of the parties that no charge sheet has been issued against the petitioner before the date of his retirement.

After hearing learned counsel for the parties we are of the considered view that the matter is not res-integra as in a catena of judgments this court has dealt with the question `whether pensionary benefits could be withheld merely on the ground of issuance of a show cause notice before the date of retirement.' The view taken by a Division Bench of this Court in the case of Kirat Gopal Vs. Haryana Vidyut Parsaran Nigam Ltd. and others (C.W.P. No.13039 of 1999 decided on 20.3.2000) had gone in favour of the petitioner. In the afore-mentioned judgment, reliance has been placed on the judgment of Hon'ble the Supreme Court in P.R. Nayak Vs. Union of India,AIR 1972 SC 554, wherein it was laid down that the issuance of charge sheet for initiation of departmental inquiry is a sine qua non. Even otherwise under Rule 2.2(b) of Punjab Civil Services Rules, Volume II,(as applicable to State of Haryana) the aforementioned legal position is absolutely clear. The explanation appended to Rule 2.2(b) in so far as is relevant to the present case reads as under:-

> "Explanation.- For the purpose of this rule-
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> (1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and....."

In view of the above, on the basis of principle and precedents we are of the view that the impugned order the action of the respondents in

withholding retiral benefits of gratuity and leave encashment is held to be illegal. Accordingly, a direction is issued to the respondent to release all the retiral benefits of the petitioner including gratuity and leave encashment. The petitioner shall also be entitled to interest at the rate of 9% per annum from the date of his retirement till the date payment is made. The petitioner is also held entitled to payment of interest on all other delayed payments of retiral benefits from the date it became due till the date of their payment at the rate of 9 % per annum.

Needful shall be done within a period of two months from the date a copy of the order is received by the respondents.

The petition stands disposed of in the above terms.

(M.M.KUMAR)
JUDGE

Nov 9, 2006. **(M.M.S.BEDI)**
Reema. **JUDGE**